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ABSTRACT

Alternative means of compliance available to organizations to bring their manpower uses into line with existing equal employment legislation are discussed in this paper. The first area addressed concerns the classical approach to selection and placement based on testing methods. The second area discussed reviews various nontesting techniques, such as training and orientation-immersion programs. The third section looks at affirmative action programs and their impact on compliance. Finally, based on present trends, an extrapolation is made of future means of compliance available to organizations. One factor which is apparent with respect to existing manpower management systems and which is reflected in the alternative means of compliance discussed in this paper is the need for the "intake" functions of organizations to become more sensitive to the idiosyncratic strengths and weaknesses of the (new) employees. It is emphasized that educators need to demonstrate a strong advocacy to the ideology behind the existing legislation--that of insuring equal opportunity to all individuals based solely on job performance capabilities. (Author/AM)

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Equal Employment Legislation: Alternative Means of Compliance[1]

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[1]This article is a modification of a paper presented at the 1976 Southeastern Psychological Association meeting in New Orleans.

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Abstract

The last fifteen years has seen considerable new and revised legislation passed dealing with equal employment opportunities in both the public and private sectors. The preponderant response of management to the myriad of regulations seems to be a combination of frustration, confusion, and extensive firefighting techniques. This paper discusses alternative means of compliance available to organizations to bring their manpower uses into line with existing legislation. The first area discussed is the classical approach to selection and placement based on testing methods. The second reviews various non-testing techniques, such as training and orientation-immersion programs. The third section looks at affirmative action programs and their impact on compliance. Finally, based on present trends an attempt is made to extrapolate future means of compliance available to organizations.

Equal Employment Legislation: Alternative Means of Compliance

The primary purpose of this paper is to suggest alternative means of compliance available to organizations to bring their manpower uses into line with the myriad of existing equal employment regulations.

It is readily apparent that many changes have taken place in both the scope and complexity of the requirements of equal opportunity legislation from its renewed interest in the mid-sixties to the present. In addition to government publications (for example: Affirmative action and equal employment, 1974, U. S. Department of Labor, 1970, 1972 and U. S. Equal Employment Opportunity Coordinating Council, 1974, 1975) there has been parallel exuberance from non-government sources providing articles and books elucidating the laws. For an overview of the legislation the reader is referred to Byham's comprehensive text The Law and Personnel Testing (Byham, W. and Spitzer, M., 1971). Additional articles and texts may be located by referring to Sharf's "Selected Bibliography on Fair Employment" (Sharf, 1975).

For the present discussion suffice it to say that the existing Equal Employment Opportunity Commission (EEOC) legislation requires an employer to be able to demonstrate that all employment related actions and decisions (e.g.: advertising, soliciting, pre-screening, hiring, promoting, training, compensation, firing, etc.) are based on job related criteria. Certainly none of us would find fault with the

underlying logic of equal opportunity legislation. However, due mostly to misinterpretation or misinformation a fair number of employers have inadvertantly taken deleterious actions in their attempt to comply and/or avoid a legal suit. For example, an initial reaction was to rush out and give preferential treatment to the minority classes to simply increase existing percentages, often accomplishing this by ignoring or arbitrarilly lowering their selection criteria. Not only was this a poor business practice but it resulted in reverse bias and was directly in violation of the laws they were trying to comply with. Other companies stopped testing completely, and in turn relied solely on interviews or application blanks believing that this would get around the validation issue. In essence, frustration, confusion and extensive firefighting techniques seems to be a preponderant response.

In response to this prevailing Zeitgeist, this paper reviews three major categories of compliance. While for clarity of discussion each area will be treated as if it were independent of the others, a working compliance program most probably would be a combination overlapping several categories. The first area discussed is the classic approach to selection and placement based on <u>testing</u> methods. The second reviews various <u>non-testing</u> techniques. The third section looks at both voluntary and court ordered <u>Affirmative Action Programs</u>. Finally, based on present trends an attempt is made to extrapolate future means of compliance.

Contrary to at least one segment of popular belief, standard test-

ing techniques are still perfectly legal means of making various employment related decisions. Specifically Section 703, paragraph h of the 1972 EEO Act states "...nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test..." (U. S. Department of Labor, 1972). As long as the employer uses tests which have been professionally selected and validated against job related criteria, this approach represents one of the most logical and efficient means of compliance. Further, and more importantly, it can lead to a very sagacious use of manpower. Too frequently in the past employers have used personnel decision policies without ever checking to see the impact, that is, whether they were in fact hiring the best performer or screening out and losing the better ones retaining only the mediocre performers. The related problems of locating the correct test or tests for the specific situation, of over reliance on tests as sole data, cost related decisions, etc., are succinctly covered elsewhere. The reader is referred to Ash, P. and Kroeker, L. (1975), Guion (1965A), Cronbach, L. (1970), and Sands, W. (1973) for excellent guides to the use of tests in selection programs.

An issue relevant to the use of tests for compliance is the all too frequent practice of over emphasis on fitting-the-man-to-the-job. A large portion of the companies still using testing have adopted a test or test battery which they use to find THE applicant who meets the requirements for a specific job. While this is of course both legal and reasonable, it is not an efficient approach to maximizing one's manpower. Dunnette addressed himself to this issue with his multi-

predictor selection model (Dunnette, M., 1963). In essence he proposed tailoring the selection of predictors to match the individual and further to assess what various job situations you would be able to use the individual in while still meeting organizational goals. This approach allows for maximum flexibility within an existing organization.

A more recent approach to the problem of finding tests which correlate highly with job related criteria is the use of In-Basket-Tests (IBT), a form of job sample tests. While job sample tests have been in use for lower level positions and clerical jobs (as a matter of fact represent the vast majority of tests still retained by companies which have all but eliminated other forms of testing) middle and upper level positions have been selected by other means. The standard IBT consists of items selected and modified from actual managers' or executives' in-baskets which are then assembled into a packet and given to a prospective candidate. The assessee responds within a specified time period by writing down for each item the specific behavior he/she believes to be appropriate (anything from "no action at present", to "call Joe for...," to a specified decision written out in detail). These can then be scored against an empirically developed key and the appropriate employment decision facilitated (for additional explanation see Development Dimensions (1975), Frederiksen, N., Saunders, D., and Wand, B. (1957), Lopez, M. (1966), and Meyer, H. (1970). Due to its make up, the IBT offers an ideal solution to finding job related predictors. Incidentally, it can also serve as an excellent training tool in decision making techniques.

An assumption glossed over until now, is that an organization will

have a large enough manpower pool to allow for statistical validation studies to be performed. While the EEO legislation does accept a non-criterion validated instrument to be used it clearly encourages you to work towards that whenever and wherever practical. Obviously there are many situations where this is not possible, particularly in smaller organizations. However, it is still feasible to use tests and be in compliance by means of a technique called synthetic validity.

Synthetic validity differs from traditional validation primarily in the intended application of the test battery as a predictor. It attempts to look at the specific relationships between factors in a test or tests as they relate to elements of job performance on several different jobs within the same organization. It requires a careful job analysis of all positions within the organization to identify specific job elements. Normally, a number of elements will be common to all positions but will vary in their importance specific to the job, as well as some elements being unique to only one or two positions. Then performance ratings are obtained on <u>all</u> employees on the identified elements. Next a test battery is validated on the entire organization against the performance ratings (See Guion 1965b for more detail). Finally, for each position expectancy charts are developed based on the relevant job element and related test component. This technique thus allows for the entire personnel pool to be used for establishing the validities rather than only those (few) individuals occupying a specific job.

Primoff (1971, 1972, 1973), of the U. S. Civil Service Commission, has popularized a variation on synthetic validity called the job-element

procedure which represents an eclectic approach to selection emphasizing the presence (or absence) of necessary basic elements in the applicant. Unlike standard test-based systems, however, it does not attempt to rate acquired skills, education, etc. over and above the basic elements. Under the job-element procedure "credit is given for each important element based on all available evidence, including, as feasible, self-report, supervisory report, kinds of accomplishments, experience and training background, and evidence of interest and motivation, as well as tests" (p. 14, 1972, op. cit.). Similar to the standard synthetic validity approach, tests are used in such a way to increase via weighing, the factors which are highly correlated to the job elements and decrease or eliminate those minimally correlated or irrelevant.

Let's assume that for one or more reasons an organization has decided against using paper and pencil tests as part of their overall selection program. What avenues are open to them as alternative means of compliance?

One possibility is to reduce entrance requirements or prerequisites and increase the organization's training programs. By minimizing entrance requirements you increase the probability of obtaining a more representative workforce and, thus, providing greater equal opportunities. By emphasizing training rather than relying on previous experience and/or education, you should end up with individuals who are better indoctrinated in the organization's perspective and better prepared for the job. There are a tremendous variety of techniques and methods available, such as: vestibule, on-the-job, simulation, role-playing, job rotation, programmed instruction, etc., each with its inherent strengths

and weaknesses. Selection of methods and the subsequent development of a training program is dependent on the contingencies operating within the organization. Particular care needs to be taken with the selection and training of the trainers. Several good references are Goodman, P., Paransky, H. and Salipante, P. (1973), McGehee, W. and Thayer, P. (1961), Schneier, C. (1974) and Smith, H. C. and Wakeley, J. (1972).

Another non-testing alternative is the recent use of "orientation-immersion" programs. Exemplary of this type of program is one which was developed by Dr. Charles Hicks, Jr. of Gulf Oil Corporation titled Employee Counseling and Orientation Program (ECOP) (Hicks, C. 1975). The overriding purpose of ECOP is to provide "A continuous and mutual process of learning which helps minority and women employees...in functioning within the corporation, and as well, helps the corporation to become alert and responsive to the needs of these employees in the work force" (p.10). Immersion programs, such as ECOP, focus on the contingencies between the organizational milieu, the operating peer group pressures,and the employee needs. The methods include individual and group counseling, the dynamic orientation process, and follow-up assessments. In practice these programs are heavily dependent on training techniques and similar type issues and decisions apply. The significance of this orientation as an alternative means of compliance lies in its long term impact on the organization. By nature of its Gestalt-type emphasis, it can effectively not only allow for and result in the inclusion of the minority groups into the work force, but can tremendously increase the probability that they will remain on as productive members. The orientation program, as with standard training

systems, would allow an organization to minimize its entry requirements by substituting individualized training within the organization. The crucial difference in this immersion approach and regular training programs (and of course in regular testing programs as well), is the continued dynamic involvement with the employee to facilitate their integration and adjustment into the organizational milieu. While validated testing programs may eliminate current entry level discrimination and/or biases relative to other manpower decisions, it does not effectively deal with adjustment problems of the newer employees. The same holds true for training programs which were developed solely to reduce reliance on testing and/or entrance requirements.

This next section deals with Affirmative Action Programs (AAP). For ease of discussion the author has been dealing primarily with legislation from EEOC, and not from the Office of Federal Contract Compliance (OFCC). EEOC does not require formal affirmative actions plans unless an organization is found to be in violation of the law. In that case the court will usually mandate the development of a corrective AAP. On the other hand, OFCC requires organizations to have in operation AA plans before they can bid on a contract, in addition to meeting equal opportunity guidelines. Depending on whether the AAP is voluntary or mandated will all too often determine the scope and content of the plan. Continuing with the arbitrary limitation of this paper in dealing only with EEOC guidelines, an organization can operate without AA plans safely if their selection program is in compliance. However they may choose to implement a voluntary AA Plan if for example inspite of having a criterion validated program, they feel they are underutilizing a segment

of the population. Thus, they may set some goals for themselves and develop a special training program or outreach program to bring in more of this particular segment without sacrificing the existing selection program. This, of course, is exemplary of a positive use of AA Plans. Court ordered AAP and/or voluntary plans hastily constructed to establish the "proper" percentages relative to some census survey can have both intended and unintended detrimental effects on assuring equal opportunity within the organization. The initial action and impact is frequently the ignoring of properly established criteria and reverse bias treatment of majority members. The dilemma of compliance is not with AA Plans--voluntary or court ordered--which result in reassessing and eliminating non-job related criteria, or of introducing methods which would serve to maximize the effective and proper use of available manpower while sacrificing no class of individuals. But AA plans which attempt to rectify past injustices by primarily forcing a physical increase in percentage representation of minorities (with an implied restriction on positive decisions for non-minorities), and only secondly placing concern on changing the selection process itself to become more equal in its application, are truly counterproductive. They lead to lower morale, subjective and arbitrary selection decisions, and poorer use of available manpower. Clearly, the emphasis should be in the development of uniform job related selection and personnel decision systems. For additional information on setting up AAP's, the reader is referred to "Affirmative Action and Equal Employment: A Guideline for Employers" (1974).

The final topic addressed in this paper might be best phrased

"Where do we go from here?" Two important trends are emerging which are propaedeutic to future avenues of compliance: 1) area wide combined personnel pools, and 2) assessment centers. Both of these methods can circumvent the problem the average organization is faced with in terms of the lack of adequate numbers to develop statistical validation studies (recent proposed equal employment guidelines by the Equal Employment Opportunity Coordinating Council, ask for thirty individuals per subgroup to demonstrate the relationship between the predictor(s) and job related criteria (1975)). Additionally, both methods allow for a more comprehensive assessment of available manpower. A combined personnel pool can be coordinated along various lines, such as parallel industries, similar job tasks across different organizations, government (state or local) placement agencies, and private organizations set up to totally handle the human resource functions for various companies, etc. The inherent advantages of combined personnel pools--particularly with the expectations of increasing legislative controls--make them a very attractive means of compliance. With increased numbers to run criterion-related validation studies on the entire area of manpower maximization should be able to make more rapid progress. Refinement of the various tools/instruments available is but one payoff, another significant one being the availability of larger pools of individuals to choose from for the specific organization.

Assessment centers offer another strong possibility for future compliance. Bray (1974), in talking about uses of assessment centers, highlighted their ability to aid in understanding and appraising minority individuals who in the past have been discriminated against by

classic selection systems. The centers, primarily as a result of their genesis and normally greater amounts of funding available for the assessment process than the average organization, have developed an approach paralleling Dunnette's multi-predictor selection system. Thus they can frequently do a better job of predicting on-the-job performance for members of groups for which standard techniques fail. Similar advantages to combined personnel pool systems apply to centers with respect to obtaining validation data. This is a significant point in that assessment centers come under the same regulations as any other selection device. Additional information on assessment centers can be found in Bray, D. and Grant, D. (1966), Bray, D. and Campbell, R. (1968), Byham, W. and Pentecost, R. (1970) and Moses, J. (1972).

One factor that is apparent with respect to existing manpower management systems and which is reflected in the alternative means of compliance discussed in this paper, is the need for the "intake" functions of organizations to become more sensitive to the idiosyncratic strengths and weaknesses of the (new) employees. Traditionally, organizations have taken what seemed to be the most efficacious approach--identify job requirements and search for the applicant who not only had the abilities but demonstrated them successfully on standard tests. More and more we are realizing this is not maximizing the use of available human resources. Some prospective employees may have the ability to perform well on the job but lack the necessary skill to respond properly on the predictor being used. Others may not even get considered presently because of a history of short tenure on previous jobs, even though that may have resulted from poor placement by the respective

organizations. Additionally, there are those who do lack necessary prerequisites but who would probably do well after in-house training. The role of the personnel deparment should be changing to allow the organization to respond to these individuals--frequently members of minority groups--as well as to the applicant capable of being traditionally assessed.

In attempting to reach some closure on alternative means of compliance, one point needs to be reemphasized. As educators, we need to demonstrate a strong advocacy to the ideology behind the existing legislation--that of insuring equal opportunity to all individuals based solely on job performance capabilities. Unfortunately, the majority of organizations had been remiss in their responsibility to verify (or have verified) the value and fairness of a particular predictor's data in making an employment decision, and thus the government's intervention. Be that as it may--employers are now saddled with mandated sanctions to rectify the situation, some of which are perceived as being beyond the scope of existing organizational means. This paper attempted to illuminate several alternative methods which may, singularly or in combination, alleviate what appears to be an insurmountable demand on the employer by the government. When the dust settles, perhaps we will end up with more sophisticated means of uniformly dealing with personnel--our most valuable resource!

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